To: Chairman Skinner and the VRE Operations Board

From: Rich Dalton

Date: November 20, 2020

Re: Recommend Authorization to Execute a Passenger Rail Improvements and Funding Agreement

**Recommendation:**

The VRE Operations Board is asked to recommend the Commissions authorize the Chief Executive Officer to execute an agreement with the Virginia Passenger Rail Authority, or alternatively the Department of Rail and Public Transportation for later assignment to the Virginia Passenger Rail Authority, for Passenger Rail Improvements and Funding.

**Summary:**

The Passenger Rail Improvements and Funding Agreement (“Funding Agreement”) includes provisions for the Commissions to fund a portion of the Planned Improvements and the purchase of real property for right-of-way acquired by the Commonwealth from CSX Transportation (CSXT). The Commissions will utilize Commuter Rail Operating and Capital (CROC) funds for both a debt issuance and on a pay-as-you-go (PAYGO) basis as the source of the funding commitment. Once complete, the Planned Improvements will allow a significant increase in VRE service in accordance with the term of a separate Operating and Access Agreement with the Virginia Passenger Rail Authority (“Rail Authority”). Finally, it is anticipated the Agreement will be executed with the Department of Rail and Public Transportation (DRPT) and later assigned to the Rail Authority when practical.

**Background:**

Since 1992, the Commissions have been engaged in operating and planning the expansion of service for the Virginia Railway Express (VRE). In 2002, the Commissions and CSX
Transportation (CSXT) established a corridor improvement program overseen by a corridor task force which included representatives of the Commonwealth of Virginia. The purpose of the corridor task force was to identify and fund capital improvement projects in the RF&P corridor to expand passenger rail. The Commonwealth of Virginia, acting through the Department of Rail and Public Transportation (DRPT), has worked collaboratively with the Commissions to advance commuter rail service, and beginning in 2009, began sponsoring the additional inter-city passenger rail service through the ‘Amtrak Virginia’ program.

The Commonwealth of Virginia, acting through the new Virginia Passenger Rail Authority (“Rail Authority”), will enter into a comprehensive rail agreement with CSXT for the purchase of approximately half of CSXT’s interest in the railroad tracks and other railroad assets along the corridor. This agreement will effectively split the corridor longitudinally. The agreement includes a series of specific rail infrastructure improvement projects to facilitate the separation of freight and passenger rail services along the corridor, where feasible, so the two services may operate side-by-side on separate dedicated railroad tracks and other infrastructure and facilities. This separation will improve the reliability and capacity of both freight and passenger rail.

Recognizing the benefits to VRE of this agreement and the expected gains in reliability and capacity, VRE and DRPT began discussions last year on a VRE funding contribution. When VRE’s FY 2021 budget was adopted by the Operations Board, staff were directed to continue discussions and develop an agreement with DRPT that would utilize a mix of debt proceeds and cash to contribute towards the Planned Improvements – identified below as Supported Program Elements.

**Commuter Rail Operating and Capital (CROC) Fund**

CROC was created by the General Assembly in 2018 for the benefit of commuter railroads in the Commonwealth of Virginia. CROC funds can be used for commuter rail operations, for capital projects on a cash or PAYGO basis, and as the backing for a debt issuance. By law, no more than 66 percent of annual CROC funding can be committed to debt service.

CROC is currently funded at $15 million per year from fuel taxes collected in NVTC and PRTC regions. VRE and the Commissions have already committed the FY 2019-2021 CROC funds (3 years x $15 million = $45 million total) to the VRE Crystal City and L'Enfant Station capital projects on a PAYGO basis. No commitments have yet been made for CROC funds in FY 2022 and beyond.

**CROC-Backed Debt**

Under the proposed Funding Agreement, the Commissions will issue CROC-Backed Debt as permitted under Va. Code § 33.2-3502. The proceeds from the CROC-Backed Debt will be transferred to the Rail Authority and will be used to purchase real property within the VRE service area from CSXT. The Commissions will use best efforts to issue the CROC-Backed Debt no later than November 15, 2021, and shall issue the CROC-Backed Debt no later than November 15, 2022, provided the Commission and the Rail Authority both agree the
issuance of the CROC-Backed Debt will generate sufficient proceeds and otherwise reasonably satisfy the objectives of the Funding Agreement. Future action by the Commissions will be required before CROC-Backed Debt could be issued.

Financing structures for the CROC-Backed Debt may include public bonds, privately-placed bonds, bank financing, and financings under federal or state programs such as TIFIA, RRIF and the Virginia Resources Authority (VRA). The CROC-Backed Debt may be credit enhanced, supported by reserves, issued in one or more taxable or tax-exempt series, or otherwise structured and offered so as to achieve the objectives of the Funding Agreement. The Commissions shall be solely responsible for and make all debt service payments from appropriated CROC funds pursuant to the final financing agreements. The Commonwealth and the Rail Authority shall have no liability for any CROC-Backed Debt, nor will member jurisdictions of the Commissions.

**CROC PAYGO Contributions**

In addition to the one-time commitment of proceeds from the CROC-Backed Debt, VRE and the Commissions will also contribute CROC funds to the Rail Authority on an ongoing basis. Beginning in FY 2022 and continuing through FY 2031 (ten years total), any available CROC amounts not already committed to debt service will be transferred on a quarterly basis to the Rail Authority to support key elements of the rail improvement program (see below). The Commissions may substitute an alternative capital funding source in place of the CROC funds for all or part of any required CROC PAYGO Contribution to the Rail Authority, provided the total equivalent amount of the required CROC PAYGO Contribution is otherwise provided.

**Supported Program Elements**

**CROC-Backed Debt Proceeds** will be used by the Rail Authority to support acquisition costs of the Real Property within the VRE operating territory. However, if in the reasonable opinion of the Commissions’ tax and bond counsel, such use of the CROC-Backed Debt Proceeds jeopardizes the tax-exempt status of the CROC-Backed Debt, then the Commissions and the Rail Authority may collaborate in good faith to agree on alternative uses of the CROC-Backed Debt Proceeds.

**CROC PAYGO Contributions** will be used to support the following Supported Program Elements, and this list of program elements supported by the CROC PAYGO Contributions may be amended in the future upon mutual agreement of the Commissions and the Rail Authority:

- New Long Bridge for Passenger Rail
- Alexandria Fourth Track
- Franconia Springfield Bypass

In accordance with Va. Code § 33.2-3501(B), the Commissions and the Rail Authority will collaborate to ensure those assets funded by the Commissions through this Funding
Agreement shall be subject to the continuing use of the Commissions for the useful life of such assets.

**Assignment**
This Agreement may be initially entered into with DRPT and later assigned by DRPT to the Rail Authority which would be responsible for all obligations and activities contemplated by this Agreement.

**Fiscal Impact:**
There is no immediate fiscal impact from recommending the Funding Agreement to the Commissions. The Funding Agreement only identifies the general structure of the funding contribution VRE will make to the Rail Authority in support of the Transforming Rail in Virginia Program. Once additional financial analysis and due diligence work is completed, the Operations Board and the Commissions will be asked to approve a more detailed financing structure for the CROC-Backed Debt Issuance.

However, the Funding Agreement does represent a significant step toward a major financial commitment by VRE and the Commissions to the Rail Authority and to improved passenger rail service in Virginia. In broad terms, VRE will be committing the entire $15 million of its annual CROC funds for a ten year period (approximately FY 2022 to FY 2031), plus up to half of its annual CROC funds ($7.5 million per year) for an additional twenty years after that as debt service. During the first ten years, CROC will be unavailable as a funding source to support existing or new services, unless a replacement source for the required PAYGO contribution can be identified. After the first ten years (i.e., once the PAYGO contributions are complete), a portion of the CROC funds will revert to VRE and be available to support new and expanded service.
Virginia Railway Express
Operations Board

Resolution
9C-11-2020

Recommend Authorization to Execute a Passenger Rail Improvements and Funding Agreement

WHEREAS, in December of 2019, the Commonwealth of Virginia announced the Virginia Rail Improvement Plan which includes the acquisition of CSX Transportation right-of-way in the Commonwealth; and,

WHEREAS, during the 2020 Virginia General Assembly session, the Virginia Passenger Rail Authority ("Rail Authority") was established; and,

WHEREAS, once the right-of-way is acquired by the Commonwealth, the Rail Authority will work collaboratively with CSX Transportation to construct Planned Improvements, in part, for the benefit of additional VRE service; and,

WHEREAS, the Commissions will provide a funding contribution to the Rail Authority to fund a portion of the Supported Program Elements and the purchase of real property; and,

WHEREAS, the Commissions will commit annual Commuter Rail Operating and Capital (CROC) funds for a CROC-Backed Debt issuance as well as pay-as-you-go contributions,

NOW, THEREFORE, BE IT RESOLVED THAT, the VRE Operations Board does hereby recommend the Commissions find that, in accordance with recently adopted amendments to budget bills HB 29 and 30, meeting by electronic means is authorized because the nature of the declared emergency makes it both impracticable and unsafe for the Operations Board to assemble in a single location on November 20, 2020, and that meeting by electronic means is authorized because the items on the November 20, 2020, Operations Board Meeting Agenda are statutorily required or necessary to continue operations of the Operations Board and the discharge of the Operations Board’s lawful purposes, duties, and responsibilities; and further find that meeting by electronic means is authorized because the items on the November 20, 2020, Operations Board Meeting Agenda are encompassed within the continuity of operations ordinances adopted by member localities of the Virginia Railway Express Operations Board to assure the continued operation of the government during the disaster posed by the public health emergency resulting from COVID-19; and,

BE IT FURTHER RESOLVED THAT, the VRE Operations Board is asked to recommend the Commissions authorize the Chief Executive Officer to execute an agreement with the Virginia Passenger Rail Authority, or alternatively the Department of Rail and Public
Transportation for later assignment to the Virginia Passenger Rail Authority, for Passenger Rail Improvements and Funding, subject to approval as to form by legal counsel.

Approved this 20th day of November 2020

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Gary Skinner
Chairman

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Jeanine Lawson
Secretary